

Decision 04-08-031 August 19, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U 39 M) for an Order Under Section 851 of the California Public Utilities Code to Sell and Convey Certain Limited Sole-Customer Public Utility Facilities.

Application 99-04-048
(Filed April 30, 1999; Petition
for Modification filed
August 22, 2003)

**DECISION GRANTING THE PETITION
OF PACIFIC GAS ELECTRIC COMPANY
TO MODIFY DECISION 99-12-030**

Pacific Gas and Electric Company (PG&E or Company) seeks to modify Decision (D.) 99-12-030 to approve the use of an updated standard form purchase and sale agreement for sole-customer facility sales. PG&E further requests that the Commission permit future modifications to the updated agreement without prior Commission approval where such modifications (i) are used only to clarify existing terms for individual transactions; (ii) further strengthen the Company and/or ratepayer protections recognized in D.99-12-030; or (iii) are used only to improve the administrative efficiency of the transaction.

The original application (Application (A.) 99-04-048) sought authority to sell certain limited public utility facilities owned and operated by PG&E solely to provide electric or gas service to an individual customer (Sole Customer Facilities). PG&E requested authority to pursue the sale of Sole Customer Facilities meeting certain requirements by utilizing a standard form purchase and sale agreement and by notifying the Commission of each sale by an advice

letter filing. The Commission would grant or deny the request for final approval of these sales upon reviewing the advice letter filing. The proposed advice letter filing process was designed to streamline the process of selling the facilities and thus conserve PG&E and Commission staff resources.

Examples of Sole Customer Facilities include electric distribution equipment (including conductors, poles, switches, connection hardware, and transformers), gas and electric metering equipment, and gas service piping. Each sale would be capped at \$250,000. Each facility would be valued at a price equal to or greater than replacement cost new less depreciation. The net-of-tax proceeds from the sale would be credited to the depreciation reserve, to the benefit of ratepayers.

In D.99-12-030, we approved the use of the advice letter process for the sale of Sole Customer Facilities and approved a standard agreement.¹ By this petition, PG&E seeks to replace the agreement approved in D.99-12-030 with an updated purchase and sale agreement for customer-specific sales. In its opinion the updated agreement increases the protections to and benefits for PG&E and ratepayers in the following manner:

- **Service Costs:** Buyer shall pay PG&E the costs to physically separate the facilities from the remainder of PG&E's distribution facilities. (Agreement Para. 3.2.)
- **Taxes:** Greater protections to PG&E and ratepayers against taxes associated with the Sole Customer Facilities, including specifically that the purchaser shall pay all taxes arising in connection with the sale, even if levied against PG&E. (Agreement Para. 3.3.)

¹ That agreement is in Appendix A.

- **Costs of Compliance With All Legal Requirements:** Except for certain limited circumstances including obtaining Commission approval, the Buyer, at Buyer's sole expense, shall be responsible for complying with all legal requirements and obtaining all authorizations, consents, licenses, permits, and approvals of government authorities and third persons, including the California Environmental Quality Act (CEQA). (Agreement Para. 5.2.)
- **Disclaimer:** The updated agreement contains a disclaimer of environmental hazards, the presence of hazardous substances, compliance of the facilities with environmental requirements, or liability or potential liability arising under environmental requirements. (Agreement Para. 5.4.)
- **Enhanced Indemnity Provision:** The updated agreement contains a stronger indemnification clause that protects PG&E and ratepayers. (Agreement Para. 8.)
- **No Assignment Permitted:** The updated agreement prohibits the Buyer's assignment of the agreement. (Agreement Para. 9.3.)

PG&E asserts that the updated agreement preserves all of the requirements and protections set forth in D.99-12-030 while affording PG&E and ratepayers greater protections over the original agreement. Accordingly, PG&E believes the updated agreement enhances the public interest benefits recognized in D.99-12-030.

By this petition, PG&E also requests authorization to make modifications to the updated agreement that (i) clarify the existing terms of the updated agreement without making substantive changes; (ii) enhance existing protections for the Company and/or ratepayers; or (iii) are designed solely to improve administrative efficiency. PG&E requests authorization to make these changes without prior Commission approval. PG&E contends that its ability to make these changes will have either no impact or a beneficial impact on ratepayers.

PG&E explains its proposal:

A. Modifications to Clarify Existing Terms

In the normal course of negotiating the sale and transfer of Sole Customer Facilities, PG&E occasionally requires the ability to make non-substantive, clarifying modifications to the standard form agreement. Such modifications may be necessary to delete references to severance costs if no severance work is necessary or supplement the definition of “Environmental Requirements” and “Hazardous Substances” to take into account new laws that may be enacted. No clarifying modification will cause a substantive change to any term of the updated agreement.

B. Modifications to Enhance Protections of PG&E and/or Ratepayer Interest

The updated agreement strengthens the Company and ratepayer protections in the original agreement. Individual transactions may, however, require that PG&E contract for transaction-specific protections. These additional protections will either enhance the protections for ratepayers or else have no effect on the ratepayer protections approved in D.99-12-030 and strengthened by the updated agreement. Examples of modifications to enhance PG&E and/or ratepayer protections include adding references in the disclosure, disclaimer, release and indemnity provisions to specific claims or potential claims the buyer might otherwise assert, such as the presence of a particular Hazardous Substance or known defect in the condition of the facilities.

C. Modifications to Improve Administrative Efficiency

PG&E requests authority to modify the updated agreement to improve, where possible, the administrative efficiency of executing and closing the purchase and sale transaction. Such modification will be purely non-substantive and will have no adverse impact on ratepayers. Modifications to improve

administrative efficiency will be identified on a case-by-case basis and may include such modifications as the buyer agreeing to extend the closing date to accommodate an emergency situation or including more specific instructions regarding the person to whom particular types of notices should be given or documents delivered in order to expedite PG&E's internal review process.

Response

Modesto Irrigation District (MID) filed a response which objected to the petition. MID was concerned that the proposed agreement was too complicated and could result in fewer sales. MID provides electric service in a portion of PG&E's service territory and, therefore, is available to a PG&E customer seeking to switch from PG&E to service from MID. There were no other responses or protests.

A prehearing conference was held on May 4, 2004 at which time the only parties, PG&E and MID, stated that they were in settlement discussions. On July 6, 2004 PG&E and MID filed a joint request to amend the proposed agreement as agreed to by both parties and to withdraw MID's response.

Discussion

Recently, we reaffirmed D.99-12-030 for the sale of sole customer facilities. In D.02-10-008, we approved a settlement between PG&E, San Diego Gas and Electric Company (SDG&E), Southern California Edison Company (SCE), the Office of Ratepayer Advocates (SCE), and The Utility Reform Network (TURN), which set forth the conditions under which the utilities would offer electric meters for sale. The settlement agreement expressly recognized the continuing validity of D.99-12-030 for Sole Customer Facilities. (D.02-10-008, Exhibit A, ¶ 6.8 and 6.9.)

PG&E's and MID's recommended changes to the agreement originally approved in D.99-12-030 are reasonable and will be adopted.² PG&E's request to make minor changes in the updated agreement without prior Commission approval is reasonable and will be adopted. There are no protests and a public hearing is not necessary.

Comments on Draft Decision

This is an uncontested matter in which the decision grants the requested relief. Therefore, pursuant to Section § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Robert Barnett is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. PG&E's updated agreement for the sale of Sole Customer Facilities will increase the protections to and benefits for PG&E and ratepayers by clarifying that the buyer shall pay certain service costs, taxes, and the cost of complying with legal requirements, plus providing an enhanced indemnity provision.

2. It will benefit PG&E and ratepayers if PG&E is authorized to make modifications to the updated agreement that (i) clarify the existing terms of the updated agreement without making substantive changes; (ii) enhance existing protections for PG&E and/or ratepayers; or (iii) are designed solely to improve administrative efficiency. PG&E should be permitted to make these changes without prior Commission approval.

² The new agreement is in Appendix B.

Conclusion of Law

The petition should be granted.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) shall use the updated standard form purchase and sale agreement set forth in Appendix B for sole-customer facility sales.
2. PG&E may modify the updated agreement without prior Commission approval where such modifications (i) are used only to clarify existing terms for individual transactions; (ii) further strengthen PG&E and/or ratepayer protections recognized in Decision 99-12-030; or (iii) are used only to improve the administrative efficiency of the transaction.
3. Application 99-04-048 is closed.

This order is effective today.

Dated August 19, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

I dissent.

I reserve the right to file a dissent.

/s/ LORETTA M. LYNCH
Commissioner

I dissent.

A.99-04-048 ALJ/RAB/avs

/s/ CARL W. WOOD
Commissioner